The Solicitors' Journal

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Current Topics.

Justices' Matrimonial Jurisdiction: Home Office Circular.

REFERENCE was recently made in this column to the circular which the Home Office proposed to issue concerning such of the recommendations of the Summary Courts (Social Services) Committee in regard to the matrimonial jurisdiction of justices as were capable of being adopted without legislation. This has now been done. The circular has been sent to clerks to the justices throughout the country with the request that they furnish each justice with a copy. The circular consists of a number of excerpts from the committee's report and observations thereon. We shall, as far as possible, confine our attention here to the latter, the report itself having already been dealt with in these columns (80 SOL. J. 253). The Secretary of State expresses his desire specially to draw the attention of justices to certain observations of the committee on the subject of conciliation and to suggest that they should review their procedure so as to ensure that, as a general rule, all persons desirous of making applications for separation orders should be seen in the first instance by a magistrate with the assistance of the clerk. The committee, it may be remembered, viewed "with some misgiving the practice which obtains at many courts of encouraging probation officers to interview in the first instance most, if not all, persons desiring to make applications for maintenance or separation orders." Agreement is expressed with the committee's view that the matrimonial work of the probation officer should be supervised in the same way as his other duties, and all courts of summary jurisdiction are asked to entrust to their probation committee the responsibility of assisting and supervising the probation officers in carrying out their duties as conciliators. The committee, while not suggesting that justices should never take part in conciliation work, did not favour the practice as one for general adoption. The circular states that there are some who may be eminently qualified for the task, but, where such justice undertakes the responsibility, he should perform it in a private capacity and play no further part in any judicial proceedings.

Separate Sessions.

THE circular states that the advantage of holding special separate sessions for matrimonial and analogous cases has been proved by the experience of many courts which have adopted the system. The Secretary of State would accordingly urge all courts of summary jurisdiction to make arrangements, if they have not already done so, for the hearing of such cases apart from criminal and other business. The recommendation of the committee that the Bench, when hearing matrimonial cases, should be limited to three justices, one of whom should be a woman, is commended to the consideration of justices, with the observation that in hearing cases of all kinds it is desirable that the number of justices adjudicating should not be unduly large and that a limitation in numbers is specially important in matrimonial cases. The question of legal representation is dealt with in the following terms: "The committee drew attention to the difficulties which sometimes arise in matrimonial cases from the parties being unable to state their case clearly and concisely, and pointed out that in such cases the court would be materially assisted if the parties were legally represented. The committee suggested that in suitable cases when the court is of opinion that legal assistance is desirable, the cost might be met out of the Poor Box or other court fund or that the good offices of one of the Legal Aid Societies might be invoked. In places where such facilities exist the justices will no doubt keep in mind the possibility of providing legal assistance in suitable cases." The contents of the foregoing circular relate exclusively to the committee's recommendations on the subject of matrimonial jurisdiction (and, as already explained, to those which can be adopted without legislation). The other parts of the report, dealing with probation and other social services and the organisation of the probation staff to perform these services, will, it is intimated, be the subject of a further circular.

Fixed Trusts.

THE reception accorded by the Council of the Association of Fixed and Flexible Trust Managers to the Report of the Committee on the subject of fixed trusts, whose recommendations are summarised on p. 663 of the present issue, may be indicated by short reference to a statement issued on the publication of the report. The Association intimated that its council would welcome legislation calculated to provide any further safeguards which might be necessary for the protection of the public. In connection with the recommendation for a deposit to be made to the Paymaster-General, attention was drawn to the fact that the members of the Association, in framing the constitution last April, had regard to the importance of ensuring continuity of management by providing a sum which, in the opinion of the trustees, was adequate to cover the expenses of the trust during its lifetime. With regard to provisions as to the contents of the trust deeds, meetings of unit holders, and the general conduct of the movement, which could be dealt with without legislation,

the council will, it is stated, recommend its members to adopt amendments to the constitution to deal with the points included in the recommendations. The statement places the recommendations under three heads: (1) fiscal provisions; (2) provisions requiring legislation; and (3) the provisions to be included and powers to be conferred by the trust deed constituting the trusts. These can, it is stated, be made binding upon members of the Association at once by an amendment to the constitution. The question of fiscal provisions is outside the province of the Association. At the end of last week the National Group of Fixed Trusts issued a statement welcoming the report and approving its recommendations.

Water Supplies.

Problems to which reference has been made on several occasions in these columns are dealt with in the report of the Joint Committee on Water Resources and Supplies which was issued recently (H.M. Stationery Office, price 3d. net). It may be remembered that the Committee was appointed to consider "measures for the better conservation and organisation of water resources and supplies in England and Wales." Following are some of the principal recommendations and observations. With regard to the scheduling of areas, the Committee appreciates that in certain cases such procedure may be necessary in order to ensure the protection of an adequate supply of water for public needs. In such cases it is thought that property owners should be treated in the same way as water undertakers in any projects where the former may wish to sink wells below a certain depth or to extract more than a certain quantity of water from them except for their own agricultural or domestic needs. The opposition of most of the witnesses who appeared before the Committee to the Ministry of Health obtaining sole power to make orders (largely on the ground that the Ministry could not be expected to appreciate the needs of industry, agriculture or fisheries) is recorded with the recommendation that the Minister should not be given power to make orders, even if unopposed, without Parliamentary control. Nor is it thought that any new form of water legislation should be brought about even by orders which would be subject to affirmative resolutions of both Houses of Parliament. The rights of property owners might, in the opinion of the Committee, be so seriously affected both by the scheduling of areas of supply and by the establishment and conduct of water undertakings that it is unable in the legislative field to recommend any procedure other than the continuance of that by private Bill. It is suggested, however, that an exception might possibly be made in respect of schemes which only affect the distribution of water, and that it might be thought fitting to deal with such schemes by Provisional Order Bills.

A Central Advisory Board.

The Committee is opposed to the setting up of one central water authority on the ground that it would not be possible to invest the new department with the requisite powers. One of the main problems confronting the Committee was, of course, the harmonising of the interests of the Ministry of Health, the Ministry of Agriculture and Fisheries and other bodies concerned. The setting up of a statutory central advisory water board is, however, regarded as essential. The various Ministries affected and other interested bodies should, it is thought, be represented on it, and the board should receive all reports from the regional advisory committees, and collect and marshal all the available statistical data and information of the country's water resources and requirements. The board would be consulted on impending legislation, and be charged with the duty of advising the appropriate Minister as to the initiation of any schemes or proposals that it considered necessary in the public interest. It is noted that there are nine regional committees now in existence. The establishment of three or four more would, the committee understands, be sufficient to cover the remaining areas. It is urged, in regard to the question of compensation water, that immediate steps be taken to remedy the lack of statistical information and other reliable data. Pending such, the Committee is unable to recommend any interim method of assessment, while it is urged that the following are among considerations which must apply now and in the future: the amount of compensation water should be determined on the merits of each particular case, and that in assessing the amount to be sent down a stream impounded for water supply purposes regard should be given to the character and flow of the stream, the extent to which it is now in use for industries and fisheries, the probability of future industrial development, the protection of the rights of riparian and other landowners, and the minimum proportion of the flow below which compensation ought not to be fixed in the interests both of public health and riparian owners.

Rules and Orders: Housing.

The contents of the Housing Regulations mentioned in our last issue may be shortly noted. The Housing Acts (Form of Orders and Notices) Regulations, 1936 (S.R. & O., 1936, No. 739), revoke the regulations of the same name of 1932 and prescribe over fifty forms to be used in connection with the powers and duties of local authorities under the Housing Acts, 1925–1935. The Housing Acts (Extinguishment of Public Right of Way) Regulations, 1936 (S.R. & O., 1936, No. 740), supersede the Provisional Regulations made on 7th August, 1935, and prescribe the form to be used where a local authority makes an order under s. 13 of the Housing Act, 1930, for the extinguishment of a public right of way, as well as the form of notice for publication in local newspapers to the effect that such an order is to be submitted to the Minister of Health. The Housing Acts (Equalisation Account) Regulations, 1936 (S.R. & O., 1936, No. 741), provide that certain amounts therein stated shall in each financial year, be placed to the credit of a Housing Equalisation Account from a local authority's Housing Revenue Account. Provision is made for variation of this rule in suitable cases, and also for transfers from the former to the latter account with a view to carrying out the objects of s. 46 of the Housing Act, 1935. The Housing Acts (Overcrowding and Miscellaneous Forms) Regulations, 1936 (S.R. & O., No. 765), provide for the measurement of floor space for the purposes of determining the number of persons permitted to use a house for sleeping under the provisions of Part I of the Housing Act, 1935. Forms are prescribed for use under the Act, including one containing a summary of the sections of the Act required to be inserted in rent books, etc.

Solicitors' Practice Rules, 1936.

In the course of the Annual Report of the Council of The Law Society, presented to the general meeting which was held at the Society's Hall on 10th July last, it was intimated that the Council had during the past year been largely occupied in considering the possibility of issuing rules under s. 1 of the Solicitors Act, 1933, to discourage (*a*) touting and undercutting, (*b*) the sharing of solicitors' costs with unqualified persons, and (*c*) the activities of so-called legal aid societies. These—the Solicitors' Practice Rules, 1936—have now been issued, having been submitted to and approved by the Master of the Rolls. The current issue of *The Law Society's Gazette*, where the rules are set out *in extenso*, announces that a copy of the rules is being forwarded to every practising solicitor, whether or not he is a member of The Law Society. It will therefore be unnecessary to refer to them in detail here. It may perhaps be noted in passing that under r. 5 the Council of The Law Society is empowered to waive in writing any of the provisions of the rules in any particular case or cases. The new rules come into operation on 1st October next.

Fixed Trusts.

FOLLOWING is a brief summary of the principal recommendations of the committee appointed by the Board of Trade last March to "enquire into Fixed Trusts in all their aspects and to report what action, if any, is desirable in the public interest." The recommendations with the appendices relating thereto occupy something like one-half of the 59 pages of the report which, as announced in a "Current Topic" in our last issue, was published on 12th August (Cmd. 5259, H.M. Stationery Office, price 1s.), and it will be appreciated that it is impossible here to do more than indicate their main drift. Readers desiring further particulars whether in regard to the recommendations or other matter set out in the publication must be referred to the report itself, which is deserving of careful study.

One preliminary word on a point of terminology. Instead of the term "Fixed Trust" the committee has adopted the term "Unit Trust." While in many cases the panel of underlying securities in the class of concern under consideration is fixed or only alterable under rigid and limited conditions, it is, the committee states, becoming increasingly the practice to form what are known as "flexible trusts," in which there are wide powers to vary the underlying securities at the discretion of the managers. It was decided that the inquiry must necessarily include flexible as well as fixed trusts and the term "unit trust" has been adopted as being more comprehensive and free from ambiguity. In its recommendations the committee speaks of "units" and "sub-units" to describe holdings in "flexible" and "fixed" trusts respectively.

Coming now to the recommendations themselves, the committee is of opinion that there should be control of unit trusts and the managers thereof upon analogous lines to the control imposed by statute at the present time on companies and directors. Every unit trust should be registered and the managers of every new trust should be required to file with the registrar documents and information relating to the constitution and management of the trust before proceeding to sell participation in such trust. Among documents to be filed in the first instance—the file would be open to inspection on payment of a small fee—are a copy of the instrument constituting the trust, the names and addresses of the promoters and of the management company and of the directors and secretary thereof, and copies of agreements between the management company or promoters and the trustee company relating to remuneration or any other matter whatsoever affecting the trust.

The management of unit trusts should be limited to incorporated bodies and, so far as consonant with the provisions to which the Government is a party, these bodies should be incorporated in the United Kingdom.

Management companies should be required to deposit in respect of each unit trust which they manage a substantial sum (£20,000 is suggested) with the Paymaster-General, who would invest the sum and earmark it for the protection of the unit-holders. The deposit would form part of the general assets of the management company only when the court was satisfied that all its liabilities to the unit-holders had been discharged, including the provision of a sufficient sum to cover expenses of management up to the expiration of the trust. When the foregoing provisions with regard to the filing of documents and the deposit had been complied with, the registrar would issue a certificate of registration, without which it would be an offence to offer units (or sub-units) for sale.

A trustee of a unit trust should be of definite financial standing—"a corporation," it is suggested, "constituted under the law of the United Kingdom or of any part thereof and having a place of business there and empowered by its constitution to undertake trust business having a capital for the time being issued of not less than £500,000, of which not less than £250,000 shall have been paid up in cash."

The committee adverts to the essential difference in the relationship between the holders of units and managers of unit trusts compared with that between the board of a company and its shareholders or customers, and proposes a number of accounts—too numerous for detailed mention here—in which management companies of unit trusts shall analyse and expose their profits more fully than is required of an ordinary limited company or than a board of directors of a commercial company would consider to be in the interests of its shareholders.

The committee considers that it would be wise to permit the inclusion in trust deeds of indemnities additional to these accorded by law to trustees with the object of enabling the managers to secure the services of trustees of standing, but it is recommended that such indemnities should not relieve trustees of the consequences of their own negligence, and should be expressly disclosed in documents offering units for sale in which the trustee is named. A provision similar to that contained in s. 152 of the Companies Act, 1929, rendering void certain indemnities in articles of association and contracts, should govern managers of unit trusts and should be made retrospective on the lines of proviso (*b*) of the above-named section.

While the committee does not think it either desirable or possible at this stage to prescribe a form of trust deed or other documents used to constitute unit trusts, it is considered that certain provisions—including one relating to the transferability of units (and sub-units), to which special importance is attached, both as a fundamental condition of a free market on the Stock Exchange and in relation to stamp duties on transfers—should be compulsory.

Where difficulties in obtaining the services of suitable companies to replace managers or trustees who have retired are experienced, the court should be empowered to order the trust to be wound up and to appoint a liquidator and fix his remuneration to be paid out of any available fund or out of the trust property.

A unit trust should be liable to be wound up under provisions analogous to those contained in Part X of the Companies Act, 1929, and for such purpose the directors of the management company should have the same responsibilities and liabilities as directors of a company which is being compulsorily wound up.

It is considered undesirable that the management company should be closely connected in any way with the trustee company or *vice versa*. The committee does not define the term "closely connected" but contents itself by saying that in unit trusts as they are known to-day the managers and trustees should be independent of one another, and it should be provided that where there is any community of interest, or where any of the directors of one company are directors of the other, this should be disclosed in all particulars issued.

Advertisements, with certain exceptions, should be regarded as constituting an offer for sale and should be illegal unless accompanied by full particulars of the constitution and operation of the trust. Buyers from the management company should be furnished with similar particulars, while certain specified particulars should appear on contract notes. A copy of all circulars or other documents should be filed with the registrar.

With regard to taxation it is recommended that in all settlements of a unit trust, settlement duty should be exigible on the first presentation of the trust deed and further duty should be paid as and when further property is brought into the settlement. A transfer of units (or sub-units) from one owner to another, whether through the management company or direct, should attract stamp duty. Bearer certificates should be dutiable like bearer shares. A written instrument should be required as is the case under s. 63 of the Companies Act, 1929, in connection with the transfer

of shares, while contract notes in respect of the purchase or sale of units (or sub-units) should for the purposes of stamp duty be deemed to be contract notes within the meaning of the Finance (1909–1910) Act, 1910.

The names of unit trusts should, it is recommended, be subject to restrictions similar to those imposed on companies registered under the Companies Acts, but this provision should not be retrospective. With a similar saving no name should be allowed which includes the words " Fixed " and " Trust " in conjunction.

Provisions similar to those contained in s. 133 of the Companies Act, 1929, should be made applicable to the auditors of unit trusts. A meeting of unit (or sub-unit) holders should have power to appoint auditors. The appointment should be subject to the approval of the trustee, and the trustee and the majority of holders should be invested with powers of removal. Directors of the management company and other interested persons and corporations should not be allowed to act as auditors.

Particulars are prescribed with the object of securing that income distribution warrants shall show clearly how the income distribution is calculated.

It is proposed that, with certain savings, where an advertisement circular, booklet or other document offers for sale units (or sub-units) or advertises that such can be purchased, the management company and the directors thereof at the time of issue and anyone who has authorised the issue of the advertisement shall be liable to compensate persons who acquire holdings on faith of the advertisement for any damage sustained by them as the result of untrue statements therein.

With regard to meetings, it is thought that in view of the large number of holders the cost of a regular annual meeting would be greater than would be justified, but it is recommended that the trustee or a given proportion by value of the holders (one-tenth is suggested) should have power to call, or to require the managers to call, a meeting at which each holder would have one vote for each unit (or sub-unit) held by him: Provided that not less than twenty-one days' notice of intention to propose such a resolution has been given, a meeting of holders at which not less than 25 per cent. of the units (or sub-units) are represented in person or by proxy should have power by a resolution passed by a three-quarters majority to (*a*) remove a trustee or manager, (*b*) appoint a new trustee or manager, (*c*) remove and appoint auditors, (*d*) authorise an application to the Board of Trade for an investigation into the conduct of the trust, (*e*) give directions to those controlling the voting power on the underlying securities how such power is to be utilised either generally or in specific cases, (*f*) appoint a committee and define its constitution and powers, including power to institute legal proceedings, and provide for payment of its costs and expenses, and (*g*) remove all or any members of such committee and appoint others in their place, or provide for the termination of such committee.

A provision similar to that of s. 153 of the Companies Act, 1929, should be applied enabling the court to sanction alterations in the constitution of unit trusts.

Hawking of units (or sub-units) should be prohibited. A copy of the trust deed should be obtainable by prospective buyers at a reasonable cost. The sale of units (or sub-units) of unit trusts established outside this country should be subject to the general regulations.

Penalties similar to those prescribed by s. 362 of the Companies Act, 1929, should be imposed in the case of false statements made in any documents relating to unit trusts which are required to be filed, while the imposition of other suitable penalties is recommended in the case of such other breaches of such statutory requirements as may be adopted.

Mark Potter, barrister-at-law, of 9 Stone-buildings, Lincoln's Inn, and Ashburn-place, South Kensington, left £49,356, with net personalty £48,318.

Company Law and Practice.

The Meaning of "Profits available for Dividend."

It is not my intention to discuss in this article what are " profits " out of which the law permits a dividend to be paid but to consider the interpretation of the words " profits available for dividend " ; words which are not infrequently used to describe the source out of which different persons—shareholders, it may be, or directors or debenture-holders—are entitled to receive payments: and words, therefore, the proper construction of which may be of great importance in determining the *quantum* of the moneys to which such persons can properly look for payment. For example, the memorandum or articles of association of a company may provide that profits available for dividend shall be applied in paying dividends to the shareholders according to their respective rights, and then it is in the interests of the shareholders to contend that the phrase has its widest possible meaning, that is, the sum which can be properly distributed without any liability attaching for an *ultra vires* act. The same is true of a managing director who may, under his service agreement, be entitled to a percentage of profits available for dividend: or of debenture-holders or note-holders who are entitled in addition to their fixed rate of interest to a share of the profits available for dividend. Such persons are naturally interested to say that the phrase has its widest possible meaning; but if we look at the authorities on the subject we shall find that in the ordinary case—where, that is, the context does not require that the phrase should be given a wide meaning—the interpretation to be given to the words " profits available for dividend," is not, as I think we might expect, the wide one of profits which can be distributed as dividend without a breach of the law, but the more restricted one of profits which, after the directors have made all proper deductions—as for example, by setting aside a sum to reserve—remain applicable for the payment of dividend. That is to say, it does not (subject always of course to the particular context) mean the credit balance in each year's profit and loss account, but the amount of that credit balance less all sums properly appropriated for other purposes by the directors in the due exercise of their powers.

The first case to which I want to refer is that of *Fisher* v. *Black and White Publishing Co.* [1901] 1 Ch. 174. There the company's memorandum of association provided that as between the holders of the ordinary shares and the holders of the founders shares " the profits from time to time available for dividend " should be applied firstly in paying a preferential dividend on the ordinary shares, and secondly, of the surplus, two-thirds in paying a further dividend on the ordinary shares and the remaining one-third in paying a dividend on the founders shares. Clause 74 of Table A of the Companies Act, 1862, applied to the company, and that clause empowered the directors before recommending any dividend to set aside out of the profits of the company such sum as they thought proper as a reserve fund. The question arose as to the rights of the holders of founders shares in the profits of the company, and in particular, whether the directors could properly, after paying the preferential dividend on the ordinary shares, carry the balance of profits to a reserve fund so leaving the holders of the founders shares without a dividend. This question really turned on the construction of the words in the memorandum " the profits from time to time available for dividend " ; and the Court of Appeal held that those words meant the net profits after making any deductions which the directors could properly make before declaring a dividend; so that the directors were justified after paying the preferential dividend in setting aside as a reserve fund so much of the surplus of the profits in any year as they thought fit. It was pointed out that, if the words meant exactly the same thing as " the profits " it would have been useless to introduce the

qualifying words " from time to time available for dividend " ; and Vaughan Williams, L.J., at p. 180 of the report, said this : " I think that the words ' profits from time to time available for dividend ' . . . mean the net profits after deducting all proper appropriations made by the directors. I do not think the expression can mean the net profit balance as shown by the profit and loss account . . . If it does not mean that, it seems to me that there is no resting place short of saying that it is the net profit after deducting all sums properly appropriated by the directors before they arrive at the sum out of which the dividends are to be paid. If they had the power to appropriate, and they chose to appropriate, a portion of the profit balance shown by the profit and loss account to the replacement of capital which had been expended for revenue purposes, no one denies that they could do that, and, on the other hand, no one can say that they are under an obligation to do it. It is a matter within their discretion so to appropriate the profit balance. They might, if they chose, apply the whole profit balance to dividend without making any such appropriation for the purpose of replacement of capital. That being so, the question arises whether this appropriation of part of the profit balance to the formation of a reserve fund to meet contingencies is a proper appropriation by the directors, and I think it is."

Fisher v. *Black and White Publishing Co.* is a decision on the construction of the words " profits available for dividend " in the memorandum of a company where they were used to describe the rights of the different shareholders. The restricted meaning given to them is, perhaps, more to be expected in such a case—especially when the contemporaneous articles give the directors express power to set aside profits to reserve—than in the case where outsiders have a right under a contract with the company to a share in " profits available for dividend." But it seems clear that in the latter case, too, the phrase will equally bear the same restricted meaning unless the context necessitates a wider construction. In *Bagot Pneumatic Tyre Co.* v. *Clipper Pneumatic Tyre Co.* [1902] 1 Ch. 146, the plaintiffs agreed to grant to the defendant company a licence to use certain patents and in return the company was, after paying a fixed dividend to its preference shareholders and setting aside such sum as the directors should think fit as a reserve fund, to pay to the plaintiffs a proportion of its remaining profits available for dividend. The company had in one year written off a sum of £3,000 as depreciation, and the plaintiffs claimed that the company was not entitled, before paying them their proportion of the profits available for dividend, to write off against profits any sums for depreciation. The decision in the case went in part on other grounds, but Romer, L.J., in dealing with the contention that the company was not entitled as against the plaintiffs to make any allowance in respect of the depreciation of the property, said that the agreement under which the plaintiffs' right to share in profits available for dividend arose " was not intended to deprive the defendant company of their ordinary right of ascertaining in the proper course of business and in good faith the profits of the company ' available for dividend ' in any particular year. In my judgment, if the defendant company, acting *intra vires*, in good faith and in a due and proper course of business, made certain payments out of their income before ascertaining the profits of the year ' available for dividend ' the plaintiff company would have no right to interfere. It appears to me that the defendant company had not only a right before saying what profits were ' available for dividend ' . . . to write off £3,000 for depreciation . . . but in adopting this course they were only doing that which was right and honest."

A similar question arose and was given the same answer by Maugham, J., in the case of *Long Acre Press Ltd.* v. *Odhams Press Ltd.* [1930] 2 Ch. 196. There a company had issued notes which entitled the holders, in addition to a fixed rate of interest, to a share of the profits available for dividend whenever those profits exceeded in any year the amount necessary to pay a dividend of 8 per cent. to the company's shareholders. In one year the company made a profit exceeding that amount, but the directors considered it in the best interests of the company to retain in the business the whole of that profit and they applied it in reduction of a debit to the profit and loss account, which consisted of trading losses for the preceding years. The question arose whether the note-holders were entitled to their share of this profit as being a profit available for dividend and in excess of the amount required to pay the 8 per cent. dividend to the shareholders. Maugham, J., following the decision in *Fisher* v. *Black and White Publishing Co.*, held that they were not, for " the words ' available for dividend ' must be taken to mean available for dividend after making any reserve or other similar application which the directors, in good faith, acting on behalf of the company, think it is their duty to make in the interests of the company." The note-holders' right to a share in profits depended on there being " profits available for dividend," and here there were no such profits because, after the directors had performed on behalf of the company the duties imposed upon them, there was no sum left which could be properly distributed as dividend.

The conclusion then, is that the right of persons entitled to a share of " profits available for dividend "—whether they be shareholders entitled by virtue of the provisions of the company's memorandum or articles, or outsiders entitled by contract with the company—is a right to a share not in the full profits earned, but in the profits remaining after the directors, acting within their powers and *bonâ fide*, have appropriated such amounts as they think proper to other purposes—as, for example, to provide reserves or to write off depreciation. So that, if in any case it is desired to give a right to a percentage of the full profits earned, the words " profits available for dividend " should be sedulously avoided.

A Conveyancer's Diary.

The Right of a Purchaser to a Plan on his Conveyance.

A RECENT case, *Re Sharman's Contract* [1936] W.N. 268, calls attention to the question whether a purchaser has the right to require that his conveyance shall be made by reference to a plan.

Before looking at the facts of that case it may be well to see what the rights of a purchaser are in general regarding the form of the conveyance and in particular as to the description which he is entitled to have inserted in that part of the conveyance to which we generally refer as " the parcels."

I think that as a general rule the vendor is only bound to convey by the description of the property contained in the contract. That description may not, however, in many cases be sufficient to accurately identify the property and may require to be elaborated. There can be no doubt that a vendor must be prepared to identify the land conveyed with that which he has contracted to convey and with the land to which he has shown a title.

It may be that the purchaser is bound by his contract to accept such evidence of identity as may appear from a comparison of the description in the contract with that in the muniments of title offered either with or without a statutory declaration of identity to be made by some person competent to make it, but that will not absolve the vendor from his obligation to show that in fact the description in the contract can be reconciled with that in the muniments.

It will sometimes be that the description in the contract is insufficient or is misleading, and does not with accuracy define the property intended to be included in it. Perhaps an obsolete or inadequate description may have been taken

from a former conveyance without reference to the actual modern description, or there may be some uncertainty regarding the precise extent of the property. In such cases it seems clear that a purchaser is entitled to have inserted in the conveyance an exact and (may I say) an up-to-date description inserted in his conveyance.

Apart, however, from considerations of that kind, I think that the purchaser can only as a general rule call for a conveyance of the property in the terms in which it is described in the contract.

There remains, nevertheless, the question whether the purchaser is entitled to have a plan attached to the conveyance which may or may not be referred to as being " for the purpose of identification only."

It is true that a purchaser has the right to take a conveyance in such a form as he chooses, but that rule is modified, I think, by this—that he cannot impose upon a vendor a burden beyond that which the vendor, having regard to the terms of the contract, can reasonably be expected to bear. From that well-known general rule it follows that a purchaser cannot compel the vendor to convey by reference to a plan unless the circumstances are such that the property cannot be reasonably and accurately described without one.

There are two cases which I may mention before dealing with the recent decision to which I have referred.

The first is *Sansom and Narbeth's Contract* [1910] 1 Ch. 741.

The facts in that case were that certain property was put up for sale by auction and was described in the particulars of sale as " the freehold dwelling-house and shop No. 92, High-street, Eltham, situate at the corner of Elizabeth Terrace . . . let to Mr. W. A. Narbeth, draper, on lease for 62 years from Ladyday 1894 at £40 for the first 12 years and for the remaining 50 years at £63 per annum."

The tenant, Narbeth, purchased the property. The particulars and conditions did not contain or refer to any plan.

The purchaser's solicitors prepared a draft conveyance, with a plan attached, and the vendor's solicitors struck out the reference to the plan, stating in the margin of the draft " The vendors do not agree to convey by plan. We have no measurements on our deeds."

Reference then was made to *Re Sparrow and James' Contract* [1910] 2 Ch. 60, which was, in fact, decided in 1902, but was only reported as a result of the reference to it in *Re Sansom and Narbeth's Contract*.

In *Re Sansom and Narbeth's Contract* Swinfen Eady, J., held that the purchaser had the right to a conveyance by reference to a plan. His lordship referred at some length to the case of *Re Sparrow and James' Contract*, which had not then been reported, but he said that he had not all the papers before him, and his lordship said that " it was a little difficult to see what the facts of the case were."

However, the learned judge held, as I have said, that the purchaser was entitled to a conveyance with a plan attached. His lordship referred to the leading text-books on the subject, and said: " In the case of a considerable estate when the contract does not contain any plan, if a plan were to be insisted upon showing the abuttals, hedges, ditches, streams and boundaries at every point, the form of the conveyance, so far as regards the accuracy of the plan, might lead to much litigation, that is, if the exact boundaries had to be defined at every point before the conveyance was agreed between the parties. It will be sufficient for the determination of the present case to hold that in this case and in ordinary simple cases the purchaser, as part of the rule that he is entitled to take the conveyance in his own form, is entitled to have a plan upon the conveyance, and is entitled to have a conveyance by reference to that plan."

From that it would seem that in " ordinary simple cases " a purchaser is entitled to insist upon a plan.

Then, no doubt in consequence of the reference to it in *Re Sansom and Narbeth's Contract*, the case of *Re Sparrow and James' Contract* was reported (*ubi supra*).

The facts in that case were that land was put up for sale by auction under particulars and conditions to which a plan was attached. The plan was a copy of the ordnance map upon which was printed a statement that it was for reference only and that there was no guarantee of its accuracy, but that it was believed to be accurate. The draft conveyance described the property by reference to a plan which was a copy of the plan attached to the particulars and conditions of sale. The vendor proposed to insert the words " by way of elucidation and not of warranty " to qualify the reference to the plan.

It was held by the then Farwell, J., that the vendor was not entitled to insert the words with which he desired to qualify the reference to the plan as the description in the draft conveyance was insufficient or unsatisfactory without reference to the plan, in which no material error could be pointed out.

The learned judge commenced his judgment by saying: " I think it unnecessary to determine the general question whether the purchaser is entitled in all cases to have a description of the property conveyed by reference to a plan. The case which I have to determine is one in which there is a description which, without a plan, is insufficient, or, if not insufficient, unsatisfactory, and which does not fulfil the duty cast upon the vendor, who knows, while the purchaser does not, the property, to describe the property with reasonable accuracy. It is the duty of the vendor to make himself acquainted with its limits and bounds. If he puts in a description which is sufficient without reference to a plan that may be sufficient."

Now, as it appears from the judgment in the instant case and from the opinion expressed in " Williams on Vendor and Purchaser," 4th ed., p. 621, the opinion expressed by Swinfen Eady, J., in *Re Sansom and Narbeth's Contract* that " in ordinary simple cases " the purchaser is entitled to a plan is not correct.

I must return now to *Re Sharman's Contract*.

Shortly, the facts were that a vendor contracted to sell and the purchaser contracted to purchase " All that messuage or dwelling-house situate and being Number 27 Norfolk Square Brighton in the County of Sussex." The purchaser's solicitors proffered a draft conveyance the parcels of which read: " All that piece or parcel of land situate in the County Borough of Brighton and on the east side of Norfolk Square together with the messuage or dwelling-house erected thereon or on some part thereof and known as 27 Norfolk Square Brighton aforesaid as the same is for the purpose of identification and not by way of limitation or extension of grant more particularly delineated and described in the plan drawn hereon and thereon coloured pink."

The vendor objected to the plan, although he does not seem to have said that it was inaccurate, but only that he would be put to the expense of having it verified by a surveyor, and he suggested an alternative description which I need not set out.

Farwell, J., held that the purchaser was not entitled to have a plan. It follows that " in the ordinary simple case " (as Swinfen Eady, J., put it) a purchaser cannot insist upon a plan, and the decision to that effect by the present Farwell, J., is based upon the inference to be drawn from the judgment of the then Farwell, J., in *Re Sparrow and James' Contract*, although in that case it was held that the purchaser was entitled to have a plan.

I leave the matter there; but I must say that, on the facts as they appear in the W.N. Report, if I had been asked to settle the conveyance on behalf of the purchaser, the parcels would have read " All that dwelling-house known as 27 Norfolk Square in the County Borough of Brighton."

Landlord and Tenant Notebook.

Landlord's Conditional Power to Determine.

A PROVISION entitling a landlord to "break" a lease on certain events happening is one that will be strictly construed on general principles: the *contra proferentem* principle, and that which favours continuance. An early example was afforded by *Doe d. Bromfield* v. *Smith* (1788), 2 T.R. 436, in which the tenant, holding for the life of the grantor, had agreed to a clause by which the son of the lessor could have the house if he wanted it when he came of age. That event occurred in 1786, but it took him a year to make up his mind, and the claim was dismissed on the ground that he should have signified his intention within a reasonable time.

Doe d. Wilson v. *Abel* (1814), 2 M. & S. 541, was decided in the landlord's favour; but the defence amounted to a quibble. The premises were a meadow at Hampstead, let for twenty-one years, but containing a tenant's covenant that if the lessor should be desirous during the said term to take all or any part of the land for building thereon and for yards and gardens to such buildings, it should be lawful for her to enter to make such buildings, provided she gave six months' notice of her intention. Rent was to abate according to the area taken. A forfeiture clause covered all breaches of covenant. A notice was served requiring part (the rest had been sold), duly stating the lessor's intention of building. On the day when or after this notice expired, the landlord's steward and attorney proceeded to the premises and were refused admission by the tenant's gardener. The contention was that they had no building materials with them and possession of land could be resumed only as and when it was required for such purposes. Lord Ellenborough in his judgment drew a picture of the tenant's livestock receding foot by foot as the buildings were advanced, and held that the plaintiff was entitled to judgment either on the ground of notice to quit expired or on the ground of forfeiture.

But things do not always go so smoothly for the holder of the option. In *Doe d. Willson* v. *Phillips* (1824), 2 Bing. 13, the reddendum was followed, and the covenants or other covenants preceded, by a clause which ran: "It is hereby agreed and understood, that in case the said [landlord] should want any part of the said land to build on or otherwise, or cause to be built, then the said [tenant] shall and will give up that part as requested," and reduction of rent and fencing off were provided for. There was no proviso for re-entry. The action was brought on the defendant's refusal to comply with a notice, but resulted in a nonsuit. Best, C.J., upholding this decision, which was based on the view that the provision was a covenant and not a condition, said that the distinction was important. If the landlord had wanted to make it a condition, he could have done so, and then there would have been no answer in law. If he had sued for specific performance of the covenant (which he had not), the defence would have been at liberty to resist judgment on equitable grounds. In *Doe* v. *Abel*, the learned judge pointed out, the landlord could succeed on the ground of forfeiture, and the only issue had been whether a new notice was necessary every time she wished to build.

In these cases only part of the land demised was demanded, but the judgment of Best, C.J., suggests a possibility of evading the modern requirements of the law of forfeiture. Suppose a lease, instead of a proviso for re-entry in the event of any breach of covenant, were to contain a landlord's option to determine by one week's notice in the event of any such breach; would the lessor be thereby enabled to get rid of his tenant (if he really wanted to) without the trouble and risk of a statutory forfeiture notice?

An instructive case illustrating the principles applied in construing these provisions was *Johnson* v. *The Edgware, Highgate and London Rly. Co.* (1866), 14 L.T. 45. The facts were that the plaintiff was granted a twenty-one-year lease of land at Finchley in the year 1862, with a proviso that if the land or any part of it should be required for building, planting, accommodation or otherwise, or for the purpose of working the clay, sand or gravel in or under it by the landlord or his tenants, it should be lawful for the landlord to resume possession on giving three months' notice expiring at any time. In 1863 the defendants served notices to treat in connection with their proposed railway. The plaintiff told them he had a twenty-one-year lease and they negotiated on that footing. Then his landlord's solicitor told them about the option to determine, so they negotiated with the reversioner, who served a three months' notice to quit the part they wanted. The notice informed the tenant that the lands were wanted for the railway and were *therefore* required by the landlord for the purposes, or some of the purposes, set out in the lease. The tenant did not see the "therefore," and when the defendants took possession and he sued them for a declaration, an injunction and compensation, neither did the court. The purposes for which the land was required, it was held, were not building purposes; nor were they gravel-working purposes; and as to "accommodation," all that meant was the use of the land for building a house or making a garden or a road. The "or otherwise" must be construed *ejusdem generis*, and a grant must be construed against the grantor, who in this case might have known at the time that the railway was to be made, and could have worded his lease accordingly.

A restriction on a right to determine may, on the other hand, be so repugnant to the instrument as a whole as to be of no effect; this happened in a case in which another railway was concerned, *The Cheshire Lines Committee* v. *Lewes* (1880), 44 L.T. 293. The plaintiffs had, by their agent, let a house and shop to the defendant on a weekly tenancy; at his request the agent wrote and delivered at the same time a letter stating that he could have the premises "as per agreement" until the railway company required to pull them down. What happened was that the plaintiffs gave notice to quit because they wanted to occupy the premises, not to pull them down. In these circumstances it was held that the fact that the contingency referred to in the letter had not arisen was immaterial.

It is worth noticing that while, generally speaking, the task of a landlord desiring to break a lease has been made difficult by the courts, the legislature has indeed facilitated it in one instance. The Agricultural Holdings Act, 1923, actually enables landlords to give effective notice to quit part of a holding—impossible at common law—if required for specific improvements (see s. 25), and even provides that in this case an agreement for less than the statutory twelve months' notice may be enforced (s. 23 (2) (*e*)).

Our County Court Letter.

THE DEFINITION OF MANUAL LABOUR.

THE question of whether an errand boy performed manual labour, so as to be within the scope of the Truck Act, 1831, was considered in the recent case of *Hyett* v. *Langford*, at Newent County Court. The claim was for 40s., being forty weeks' pay at 1s. per week in respect of services performed on Saturdays only. These were the only working days available to the plaintiff, who was of school age, and his duties were principally those of an errand boy in the defendant's bakery business. A cake was given to the plaintiff each week, by way of remuneration, and his case was that this was a breach of the above Act, and that he was therefore still entitled to the amount claimed as wages. The defendant's case was that the plaintiff had done odd jobs, making himself generally useful, but that there was no contract of service upon which the above Act could operate. The plaintiff's

parents were customers of the defendant, and, until a dispute arose as to their account for bread, there was no question of whether the cake was or was not a discharge of the defendant's obligations to the plaintiff. His Honour Judge Kennedy, K.C., held that each cake was of the value of a shilling, and that there had been a contract of service. The Truck Act, 1831, could only apply, however, if the plaintiff was a workman within the Employers and Workmen Act, 1875, s. 10, and so brought within the ambit of the Truck Amendment Act, 1887. A workman was defined in s. 10, *supra*, as any person in several specified occupations "or otherwise engaged in manual labour." The latter words were to be construed as *ejusdem generis* with the words preceding, as laid down in *Smith* v. *Associated Omnibus Co. Ltd* [1907] 1 K.B. 916, in which a motor driver, who had to do necessary repairs, was held to be within the definition. The result was that the plaintiff was not engaged in manual labour, but, even if the above words were not to be construed *ejusdem generis*, the same conclusion would be reached. It was not sufficient that, to do his errands, the plaintiff had to use his hands to carry parcels or handle goods. It was necessary to apply the test of whether the workman's real and substantial work was manual labour, and it was not the intention of the legislature to extend the Act to every boy in and about a shop who performed the same slight services as the plaintiff. Judgment was therefore given for the defendant, with costs.

This decision followed *Bound* v. *Lawrence* [1892] 1 Q.B. 226, in which a grocer's assistant, whose duty it was to serve customers in a shop, had also other duties involving manual labour, *e.g.*, making up parcels, carrying them from the shop to a van, and bringing goods up from the cellars. Having left without notice, the appellant was summoned under the Employers and Workmen Act, 1875, and the magistrates held that he was a workman within the meaning of the Act. They stated a case for the opinion of the court, however, and the two judges in the Divisional Court differed in opinion. The Court of Appeal reversed the decision of the magistrates, and Lord Esher, M.R., observed that it did not follow that every user of the hands is manual labour, so as to make the person who does it a manual labourer. The principal part of the appellant's occupation was selling to customers across the counter, this being his substantial employment, to which other things, although involving physical exertion, were incidental. Lords Justices Fry and Lopes agreed, and the appeal was therefore allowed, with costs.

A case on the other side of the line was *Maynard* v. *Peter Robinson Limited* (1903), 89 L.T. 136, in which the claim was for £110 as damages for negligence under the Employers Liability Act, 1880. The plaintiff was an assistant skirt hand, and had been injured owing to the absence of a fender, whereby she had incurred burns in heating irons in a fire. The jury at Bloomsbury County Court found a verdict in her favour, with £25 damages, but His Honour Judge Bacon held that the plaintiff was not a workman, and therefore could not maintain the action. The Divisional Court reversed this decision, and Lord Alverstone, L.C.J., pointed out that the plaintiff was a sempstress, whose main duty was to sew seams, either by a treadle machine or with needle and thread. Although the plaintiff did not act merely by the strength of her hands, she was a person engaged in manual labour, as skilled labour was not excluded by s. 10, *supra*. Mr. Justice Wills and Mr. Justice Channell concurred, but a new trial was ordered on the issue as to the existence of a fire guard.

The expression "otherwise than by manual labour" also occurs in the National Health Insurance Act, 1924, 1st Sched., Pt. II (8). This has given rise to another line of decisions, all by the High Court on a case stated by the Minister. Notable examples are *In re McManus* (1933), 77 SOL. J. 49, in which an acrobat was held not to be employed by way of manual labour, and *In re Graham* (1934), 78 SOL. J. 337, in which a similar decision was given in regard to a professional footballer.

Land and Estate Topics.

By J. A. MORAN.

THE holiday atmosphere is still very much in evidence: which means that auction sales of real property, both in town and country, are just now very few and far between. An attempt was made to sell the vast Huntly Estate, Aberdeenshire, in small lots: the houses were in good demand, but the competition for farms was not encouraging. But while there were not many auctions, quite a large number of important residential domains were sold by private treaty. The most important of these were Thorndon Hall, Lord Petre's Essex domain, and Great Maytham, near Cranbrook, the well-known seat of the late Mr. H. J. Tennant, M.P. Thorndon is the largest block of outer suburban land that has changed hands, in one lot, for many years. It was purchased by a syndicate, and is to be developed mainly on residential lines likely to appeal to city men.

The first of the Trading estates to be established in the special areas for the relief of unemployment is in the Team Valley, Gateshead, on a site costing about £65,000. The time, undoubtedly, is opportune, as the district, recently a depressed area, is now a busy industrial centre: and if the experiment succeeds, it is bound to have an important effect on the restitution of other movements in a similar direction. Which is all for the good of the country.

Sir Charles Trevelyan has decided to bequeath to the nation, Wallington, his Northumberland home and its beautiful moorland estate, near Morpeth, his successors remaining there, if they wish, as his tenants. Such a munificent gift is in keeping with the ambitions of the Trust to preserve the historic and beautiful country houses, with their pictures, furnishings and gardens. To keep such properties intact is far preferable to waiting until they are fit only to be scheduled as ancient monuments.

Those who contemplate buying a house will do well to have expert advice as to quality of design and building construction, internal fixtures and fittings, as well as the probability of dampness. And consideration should also be given to the following points: travelling facilities, distance from railway, shops and schools, rates in the pound for the district, liability for road charges, and the general character of the people in the vicinity. It is always well to remember it is a habit among some speculative builders to put a number of houses on one drain before connecting to the sewer in the road, instead of each house having a separate connection. The consequence is that when there is a blockage it is difficult to attribute blame; and the local council then divides the cost among the householders concerned. So that if there is a careless occupier in one house, the charges may prove fairly frequent, and in some cases, expensive.

The death is announced of Mr. Henry Evan Jones, J.P., a director of Messrs. R. Cheke & Co. (Wanstead) Limited, auctioneers and surveyors, of Wanstead and Leytonstone. The deceased was a member of the East Ham Borough Bench for thirty years. Having served on the old Board of Guardians, the Essex County Council and the East Ham Borough Council it is evident he took a great interest in local affairs.

The recent Croydon accident draws attention to the danger to houses in close proximity to an aerodrome. The heights of buildings near at hand should be regulated in accordance with the distance from the boundary of the area devoted to flying activities. There is no doubt that factory chimneys and electric pylons, close at hand, are a source of danger.

A decision of importance to local authorities has just been given in the Chancery Division. The question came before the court on a preliminary point of law arising in an action by a firm of roof-tile manufacturers who claimed that a water-course flowing through part of their property had become a sewer, and was maintainable by the local corporation. It was submitted on behalf of the corporation that a natural

stream could not, in law, become a sewer by the discharge of sewage into it. The judge held that a stream into which sewage has been discharged, is a sewer to be maintained by the local authority.

The Report on the Overcrowding Survey has corrected many mistaken ideas on the subject. The general opinion was that a million houses would be required to remedy the existing situation, while we know now that the actual requirement is not likely to be more than 200,000 houses.

Obituary.

Mr. H. BOUSTRED.

Mr. Henry Boustred, solicitor, a partner in the firm of Messrs. Henry Boustred & Sons, of Basinghall Street, E.C., and Finchley, died at his home at North Finchley on Monday, 17th August, at the age of eighty-two. Mr. Boustred was admitted a solicitor in 1901.

Mr. C. A. COPLAND.

Mr. Charles Albert Copland, solicitor, senior partner in the firm of Messrs. Copland & Sons, of Chelmsford, died on Tuesday, 11th August, at the age of seventy-five. Mr. Copland was educated at Felsted School and Pembroke College, Cambridge, and was admitted a solicitor in 1887.

Mr. J. R. KNOTT.

Mr. Joseph Robert Knott, solicitor, senior partner in the firm of Messrs. Knott & Whitehead, of Oldham, died on Wednesday, 12th August. Mr. Knott, who was admitted a solicitor in 1887, was about seventy-three years of age.

Mr. J. T. PRATT.

Mr. John Tidd Pratt, retired solicitor, of Newark, died on Wednesday, 12th August, at the age of seventy. Mr. Pratt was admitted a solicitor in 1892. He was clerk to the magistrates for the borough of Newark for many years, and he had also been clerk to the Newark Burial Board.

Reviews.

Principles of Contract. By The Right Hon. Sir Frederick Pollock, Bt., K.C., D.C.L., of Lincoln's Inn. Tenth Edition, 1936. Demy 8vo. pp. lxiii and (with Index) 762. London: Stevens & Sons, Ltd. £1 10s. net.

"To the memory of my Master in the Law, the Right Honourable Nathaniel, Lord Lindley." So we read on opening this volume; and it is good to realise that such a master and such a pupil are—one indirectly and the other directly—responsible for the production of a volume so full of sound learning and unassailable as a text-book of its subject. No review could do full justice to the value of this work—the very fact of its being in a tenth edition is sufficient to show how substantial is its hold upon the legal world; but it will be worth while noting how it has been kept in line with modern developments undreamt of by its very learned author when the first edition saw the light. "Nowadays," he remarks in the preface, "there bark and run about—*latitant et discurrunt*—in the mazy schedules of Law of Property Acts a tube of repeals and re-enactments of earlier statutory provisions; no pleaders' fictions, but effective though elusive realities. They are so many that one can hardly be sure of not having overlooked some of them." We venture to congratulate the learned author upon the draught of fishes of this tribe which his net has hauled up. That by the time an eleventh edition is called for a new hatch-out will have been consigned to the flood of legal complexity which passes on its way through Whitehall may be taken as a foregone conclusion. But until then "Pollock on Contract"—tenth edition—may be trusted as a complete guide to lawyers angling for gems of contract law.

Topham's Real Property. By Alfred F. Topham, LL.M., Bencher of Lincoln's Inn, One of His Majesty's Counsel. Eighth Edition, 1936. Demy 8vo. pp. xxxviii and (with Index), 505. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

A new edition of this well-known and deservedly popular students' work is an event of some importance. The arrangement of the book which was adopted as a result of the legislation of 1925, in which the old law was set out and compared with the new, emphasis being laid upon the distinction between the old and the new law, has been almost entirely abandoned except in cases where necessary reference is made to the old law. The greater consecutiveness that is thus imparted into the subject-matter adds to the attractiveness of the book. Every intelligent assistance to memorising is afforded by the admirable use of different types of printing. Chapter 36 containing the text of some of the chief statutory provisions relating to real property is especially valuable, as is also chap. 37, containing forms of mortgages, settlements, abstracts of title and conditions of sale. There are few students' text-books which can be more confidently recommended to those anxious to learn their subject with the minimum of effort.

Here May a Young Man See How he Should Speak Subtly in Court. Translated from a thirteenth or fourteenth century manuscript by Helen M. Briggs. 1936. Demy 4to. pp. ix and 14. London: Sweet & Maxwell, Ltd. 2s. 6d. net.

It is only fair to say that any young man who might come to this interesting little relic of the thirteenth century in search of the eternal principles of advocacy would be disappointed. For in so far as this lively record of the proceedings before the Steward of a typical Manor Court of the period has any application, by analogy, to some aspect of present-day practice one might suggest the alternative title: "Here may a Police Court Defendant See How he Should Cringe to the Magistrate." All sorts of defaulters pass through the Court and are dealt with: the man who had broken the Assize of Beer; the man who was accused of chasing game with two dogs in the lord's park; the man whose son had robbed an orchard; the man who had stolen fish from a pond and pleaded that he had taken it for his sick wife; the man who had sold rotten fish in the market. This little work gives a very vivid picture of mediæval life in one of its most important aspects. It is a book to keep as well as to read.

Outlines of the Law of Contracts and Torts for the Use of Students. By A. M. Wilshere, M.A., LL.B., of Gray's Inn, Barrister-at-Law, and Douglas Robb, B.A., of the Inner Temple, Barrister-at-Law. Fourth Edition, 1936. Demy 8vo. pp. xv and 161. London: Sweet & Maxwell. 7s. 6d. net.

Questions and Answers on Contracts. By M. O'Connell, LL.B. (Hons.). 1936. Demy 8vo. pp. iv and 180. London: Sweet & Maxwell, Ltd. 5s. net.

These are two further additions, one a new edition, to the literature available to students preparing for examinations. Both achieve their purpose—the first as a succinct statement of rules and principles; the second as a rather fuller presentation of the law of contracts (though the last chapter needs amplification).

A very useful feature of Mr. O'Connell's book is the notes to each answer referring to the standard text-books. Mr. Wilshere might well adopt this system in a future edition in view of the brevity of some of his chapters in comparison with the complexity of the law. Both works can be commended.

To-day and Yesterday.

LEGAL CALENDAR.

17 AUGUST.—On the 17th August, 1758, the secret crime of Eugene Aram came to light when the bones of Daniel Clark, the murdered shoemaker, were dug up in St. Robert's Cave, near Knaresborough, fourteen years after he had been battered to death there. At first it had been locally believed that Aram, Clark and a linen weaver named Houseman had been partners in a fraud and that Clark had absconded. Then in August, 1758, the whole matter had been re-opened on the discovery of a skeleton near Knaresborough, and people at once assumed it must be Clark's. After two inquests, it proved not to be, but enough had been brought to light to justify Houseman's arrest. It was he who sent the searchers to St. Robert's Cave, where the actual bones were found.

18 AUGUST.—On the 18th August was held the inquest on Clark's remains, and the evidence was very strong. On the night when the murdered man disappeared, Aram and Houseman had both been seen very late in his company. Immediately afterwards, Aram had been in possession of a large sum of money from some unexplained source. A great deal of plate and money had been missing from Clark's house, but he had never fetched his horse from a livery stable where he kept it. As for the medical evidence, it showed that the back of Clark's skull had been smashed with some heavy blunt instrument. The inevitable verdict was one of murder against Houseman and Aram.

19 AUGUST.—One of the strongest witnesses against Aram was his wife. They had lived together in mutual dislike and shortly after the murder he had deserted her and their six children to seek fresh openings in London. Finally, he had obtained a position in a school at Lynn and had settled there. Now, however, fate was closing in on him and on the 19th August :—

" Two stern-faced men set out from Lynn
Through the cold and heavy mist,
And Eugene Aram walked between
With gyves upon his wrist."

20 AUGUST.—On the 20th August, 1680, died Captain William Bedloe described in the Dictionary of National Biography as " dishonest adventurer and 'evidence' in the Popish Plot." He was second only to Titus Oates in the power that perjury gave him and he was as ruthless in sending innocent men to condemnation and death. He was, however, more fortunate than his colleague in crime in that he died too soon to be overtaken by retribution. In July, 1680, his credit was already waning. The vituperative Jeffreys had told him some sharp truths in Court, and feeling his power waning he had retired to Bristol. His death was caused by the violent exertion of the ride.

21 AUGUST.—On the 21st August, 1773, Dr. Johnson and Boswell visited Lord Monboddo, the eccentric Scots judge at his country estate.

22 AUGUST.—During 1817, rioting was rife in the northern and Midland counties. At York Assizes twenty-four persons were prosecuted by the Government. " A large portion of the weight and talent of the Northern Circuit was ranged on the side of the prosecution, that nothing might be wanting to give importance to these proceedings. . . . Against all this weight of power and influence, seconded by the public purse a few obscure men and boys, principally in the very lowest ranks in society, had to defend themselves." On the 22nd August, the trials ended. Ten had been acquitted. No true bill had been found against eleven. One was liberated on bail. Two remained in custody.

23 AUGUST.—On the 23rd August, 1870, Sir Frederick Pollock, Chief Baron of the Exchequer for twenty-two years, died in his eighty-eighth year, four years after his retirement from the Bench. He retained to the end the full vigour of his intellect, never shirking the exertion of his daily duties and suffering from no such ill-health as his advanced age might well have brought on.

THE WEEK'S PERSONALITY.

The Scottish Bench has often been filled by men of dominating personality, and Lord Monboddo was one of the most striking. A strong and determined judge, a profound scholar, a man of letters and an original philosopher, he was a notable figure in his day. He held that the moderns were entirely degenerated. In some ways, he was a premature Darwinian, and one wit said that " rather than sacrifice his favourite opinion that men were born with tails, he would be contented to wear one himself." Such a man was a match for Dr. Johnson himself, but the Englishman's visit occasioned no clash. The host received him courteously at the gate of his primitive old mansion. Boswell relates, " ' In such houses,' said he, ' our ancestors lived who were better men than we.' ' No, no, my lord,' said Dr. Johnson, ' We are as strong as they and a great deal wiser.' This was an assault upon one of Lord Monboddo's capital dogmas, and I was afraid there would be a violent altercation . . . But his lordship is distinguished not only for ' ancient metaphysicks,' but for ancient *politesse*, ' *la vieille cour*,' and he made no reply. His lordship was dressed in a rustick suit, and wore a little, round hat : he told us we now saw him as Farmer Burnett and we should have his family dinner, a farmer's dinner." His courtesy and learning wholly overcame Johnson's prejudices.

CORRUPTION NOT CREDITED.

The Committee of Public Petitions of the House of Commons has lately recommended that a petition making sweeping charges of bribery against the Chief Justice and the other judges of the Madras High Court should not be received. Reports like that seem to gain currency much more readily in the East than in the West. For instance, one perfectly upright judge long had a reputation for gross corruption in a certain district in India because whenever he visited it a retired Indian official who paid him a formal call was in the habit of collecting bribes from all parties interested in cases, purporting to pass on the presents to the judge. In England, the question of bribery when it comes up usually has a comical incongruity. Judge Abdy used to tell a story of how he once decided a case in favour of one Smith, a pork butcher. Shortly afterwards, he noticed that he was being given sausages for breakfast every morning and suggested to his cook some variety. " Lawks, sir!" she replied, " I forgot to tell you, sir, that Mr. Smith left a box of them, with his grateful thanks."

JUSTICE IN SICKNESS.

Towards the end of last term, Mr. Justice Luxmoore took the unusual course of hearing in his private room at the Law Courts the evidence of a witness who was in bad health. Robes were not worn. The incident recalls that memorable occasion when Mr. Baron Huddleston's bedroom was transformed into a court of justice. In August, 1890, on the morrow of his arrival at Lewes to hold the assizes, he found that a severe attack of gout prevented him from rising. Nevertheless, to save time during the interval while another judge was on his way from London, he decided to charge the Grand Jury. The terms of his commission referred to " such places and times as you may appoint," and he appointed his bedroom for the ceremony. The High Sheriff, the Under-Sheriffs and the twenty-three grand jurors arrived and ranged themselves round the bed. All the usual formalities were gone through, and, propped up by pillows, the judge delivered his charge, the doors being left open so that all might know that the room was a public court.

Notes of Cases.

House of Lords.

Westminster City Council *v.* Southern Railway Company and Others.
Westminster City Council and Another *v.* Southern Railway Company and Others.

Lord Russell of Killowen, Lord Macmillan, and Lord Wright. 20th May, 1936.

RATING AND VALUATION—RAILWAYS—BOOKSTALLS, SHOPS, ETC., IN STATION—WHETHER "RAILWAY HEREDITAMENTS"—RAILWAYS (VALUATION FOR RATING) ACT, 1930 (20 & 21 Geo. 5, c. 24), s. 1 (3).

Consolidated appeals from decisions of the Railway and Canal Commission.

The railway assessment authority having decided that some of certain premises should and some should not be treated as railway hereditaments, the various matters came before the Commission by way of appeal.

The Commission included all the premises in the railway valuation roll as railway hereditaments, and the Westminster Council appealed. By s. 1 (3) of the Railways (Valuation for Rating) Act, 1930, "'Railway hereditament' means, subject as hereinafter provided, any hereditament occupied for the purposes of the undertaking of a railway company . . ." The premises in Victoria Station included shops of the lock-up variety, such as kiosks, a branch of the National Provincial Bank, certain business offices on the first floor, Smith's bookstalls, hairdressing establishments, etc. All those premises could only be entered from the station, and were within the limits of the station, which was enclosed by its outer gates, all of which were closed by the railway company between 12.45 a.m. each night and 6 a.m. each morning. All those premises were, in fact, possessed and used by the various persons to whom they were let by the railway company for the purposes of their several trades or businesses. The premises at Beckenham Junction were all within the area enclosed by the railway company's station yard, the outer gates of which were closed between the hours of 8.30 p.m. and 6 a.m., and all day on Sundays. Those premises consisted of buildings of a permanent character, with stacking ground or storage bays attached. The tenants were builders' merchants, who used the buildings as offices and showrooms. Some of the agreements under which the various premises were held were in the form of a demise; others purported to grant a licence. The Commission unanimously regarded the case as covered by the authority of *Smith & Son* v. *Lambeth Assessment Committee* (1882), 9 Q.B.D. 585; 10 Q.B.D. 327, but MacKinnon, J., indicated that but for that authority he would have been inclined to answer in the other sense.

LORD WRIGHT read a judgment with which the other noble lords agreed. He said that, with regard to s. 1 (3), the question was whether the premises in question had been so carved out of the railway hereditament to which they belonged as to be capable of a separate assessment, or whether they had, though let out, been so let out as still to leave them in the occupation of the railway company. The occupation of the premises at Victoria was in the tenant. He used it for purposes of his trade; he possessed the key; when he shut it after business hours he still occupied it for his goods. The railway company, nevertheless, contended that, whatever was the tenant's position, he had at most enjoyment and not rateable occupation. That contention seemed at the outset to confuse the station itself with the premises erected on it. The railway company, it was said, had reserved such control that their occupation was paramount. They controlled the access to the shops by closing the station gates all night; they required the tenants to obey their bye-laws and regulations; and they imposed the various restrictions contained in the agreements. In his opinion, however, those matters were, on the authorities, and in principle, not inconsistent with the fact of rateable occupation being in the tenants. Any tenant might be subject to restrictive covenants of a stringent character. With regard to Smith's bookstalls, he thought that they were so let out as to be capable of separate assessment. He could not see how the railway company could be said to be in occupation of the bookstalls, or how they could be regarded as bearing to Smith's the same relation as a landlord bore to his lodger. The theory of the lodger did not depend on the fact that the landlord still lived in the house, but on the fact that he still retained control for purposes of his business of the whole house. Here, he (his lordship) thought that the railway company did not retain such control *quoad* the bookstalls. That opinion was contrary to the decision of the Court of Appeal in *Smith* v. *Lambeth*, *supra*. He thought that that case was wrongly decided and was inconsistent with the authorities both before and since its date. He thought also that the showcases at Victoria Station were occupied by their owners, by means of the goods which they exhibited. With regard to the premises at Beckenham Junction, they were specific and delineated sites and capable of separate occupation just as much as the shops at Victoria. In his (his lordship's) opinion, the appeals should succeed.

COUNSEL: *A. S. Comyns Carr*, K.C., and *Michael Rowe*, for the Westminster City Council and the Kent County Valuation Committee; *Tyldesley Jones*, K.C., *W. T. Monckton*, K.C., *A. M. Trustram Eve*, K.C., and *Alfred Tylor*, for the Southern Railway Company; *Sir Stafford Cripps*, K.C., and *Erskine Simes*, for the Railway Assessment Authority; *R. M. Montgomery*, K.C., and *Arthur Capewell*, for Messrs. W. H. Smith and Son.

SOLICITORS: *Sharpe, Pritchard & Co.*; *William Bishop*; *Torr & Co.*; *Bircham & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Appeals from County Courts.

Whittle *v.* Ebbw Vale Steel, Iron & Coal Co. Ltd.

Slesser, L.J., MacKinnon and Goddard, JJ. 15th and 16th July, 1936.

WORKMEN'S COMPENSATION—GREASE BOILER—DEATH FROM HEART FAILURE—FOUND DEAD IN WORKING HOURS—PLACE WHERE FOUND—WHETHER DEPENDENTS ENTITLED TO COMPENSATION.

Appeal from Tredegar County Court.

A workman was employed by the defendants as a grease boiler. His duties included seeing to the fires by throwing out ashes and fetching coal, besides his principal work of putting the grease into the boiler, to put it to cool after it had been heated, then to divide it into blocks and, finally, to carry it to a water tank to complete cooling. During the whole process, which took from three-quarters of an hour to an hour, he was in a stooping position, the average weight of the stuff put into the boiler being between 15 and 20 lbs., which he had to lift. He was seen alive forty minutes before the end of his shift, but twenty minutes later he was found lying dead over the water tank to which he would normally have gone in the last stage of the operation. His age was sixty-one, and he had previously complained of a pain in the region of the heart. His doctor, concluding that his heart was in a bad state, had advised him not to go to work. The medical evidence was that his heart might have broken down under any physical strain, and the work he was engaged in would have a deleterious effect on him. He might have died in the street or in bed and stooping was very prejudicial to him. Any work would have affected him, and he was not fit for work or for the prolonged exertion to which he was subjected. The *post mortem* examination showed that death was due to the condition of the coronary arteries. In a claim under the Workmen's Compensation Act by the dependents of the deceased, the learned county court judge

held that the cause of his death arose out of his employment, and awarded compensation.

SLESSER, L.J., dismissing the defendants' appeal, referred to *Lancaster* v. *Blackwell Colliery Co. Ltd.*, 12 B.W.C.C. 400, at p. 406; *Clover, Clayton & Co.* v. *Hughes* [1910] A.C. 242; *Barnabus* v. *Bersham Colliery Co.*, 3 B.W.C.C. 216, at p. 221; 4 B.W.C.C. 119, at p. 122; *Muscroft* v. *Stewarts & Lloyds Ltd.*, 21 B.W.C.C. 274, at pp. 281, 282, 288; *Falmouth Docks and Engineering Co.* v. *Treloar* [1933] A.C. 481; *Partridge Jones and John Paton Ltd.* v. *James* [1933] A.C. 501, and said that the last-mentioned decision governed the present case. In that case, the man had died immediately after he had been known to be at work. Here he was found dead twenty minutes after he had been last seen at work, at a place where he might reasonably have been expected to be when doing his work. The question was one of degree, and there was no general principle that a man must die immediately after receiving the strain. The learned judge was justified in his conclusion. In the absence of evidence to the contrary, it might well be that he assumed that the man was lawfully fulfilling his contract and working to complete the various processes. *Barnabus* v. *Bersham Colliery Co., supra*, was distinguishable as there was no reason to suppose that, in that case, when the man was found, he was in a place where he would have had to have been to do the work on which he was engaged.

MACKINNON, J., agreed, and said, in the course of his judgment, that he could not reconcile the cases of *Barnabus* v. *Bersham Colliery Co., supra*, and *Partridge Jones & John Paton Ltd.* v. *James, supra*.

GODDARD, J., agreed.

COUNSEL: *W. Shakespeare* and *G. Parsons; Cave*, K.C., and *W. M. Davies*.

SOLICITORS: *Furniss, Stephens & Co.*, agents for *A. J. Prosser*, of Cardiff; *Russell, Jones & Co.*, agents for *Edward Roberts*, of Dowlais.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Riddell; Public Trustee *v.* Riddell (No. 2).

Farwell, J. 8th and 9th July, 1936.

WILL—TRUST—ANNUITIES FOR LIFE—PUBLIC TRUSTEE'S INCOME FEE—HOW PAYABLE—PUBLIC TRUSTEE ACT, 1906 (6 Edw. 7, c. 55), s. 9.

A testator who died in December, 1934, appointed his wife and the Public Trustee his executors and trustees. He bequeathed several legacies and annuities, and to his wife a life annuity of £8,000, free of death duty. Having given other legacies, the testator bequeathed his residuary estate to various charities. The question arose whether the income fee of the Public Trustee payable in respect of the income required to discharge the various annuities should be borne by the annuities respectively or by the income or capital of the residuary estate.

FARWELL, J., in giving judgment, said that under the Public Trustee Act, 1906, s. 9, the Public Trustee was entitled to a fee calculated upon the capital and also to an income fee calculated upon the income of the estate. These were expenses of administration payable out of the income or capital of the estate as a whole before it was distributable. The income fee must be paid out of the whole income of the estate, the balance being applied first in paying the annuities. It should not be borne by the annuitants. His lordship could not follow *In re Bentley* [1914] 2 Ch. 456.

COUNSEL: *Wilfrid Hunt*; *J. N. Gray*; *C. R. R. Rowe*; *Radcliffe*, K.C., and *G. D. Johnstone*; *Andrewes Uthwatt* for the Attorney-General; *Manning*, K.C., and *Richmount*; *J. L. Stone*; *Miss Haskell*; *Vaisey*, K.C., and *G. Upjohn*.

SOLICITORS: *Smith, Rundell, Dods & Bockett*; *Hyde, Mahon & Pascall*; *Hurford & Taylor*; *Treasury Solicitor*; *Canter, Hellyer & Co.*; *Shaen, Roscoe, Massey & Co.*; *W. H. Gillham*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Horder; *Ex parte* The Trustee.

Clauson, J. 13th July, 1936.

BANKRUPTCY—PRACTICE—MOTION BY TRUSTEE—DEBTS TO BANKRUPT—JURISDICTION OF COURT OF BANKRUPTCY—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 59), s. 105.

In 1935, a debtor was adjudicated bankrupt on his own petition. The trustee in bankruptcy alleged that, in 1934, the bankrupt had entered the employment of the respondents to this motion, the one being president and the other honorary treasurer of the "People's Empire Council," a body which, it was alleged, was unidentifiable. It was stated that the bankrupt attributed his position to his having incurred liabilities on its behalf. On this motion, the trustee sought (*inter alia*) a declaration that the respondents were liable to indemnify the bankrupt in respect of all claims arising out of the dealings of the Council, and an order that an account should be taken between the trustee and the respondents to find the amount of the bankrupt's indebtedness in respect of those claims, and also an order that the respondents should pay the trustee the amount so found.

CLAUSON, J., in giving judgment, said that there was some *primâ facie* ground for the view that the bulk of the bankrupt's debts were debts for which he became responsible as a mere name. Under the Bankruptcy Act, 1914, s. 105, the court had a wide jurisdiction (see *Ellis* v. *Silber*, L.R. 8 Ch. 83, and *Ex parte Dickin*, 8 Ch.D. 377). But during the last fifty years a practice had grown up by which the Court in Bankruptcy exercised its jurisdiction in cases arising under bankruptcy points, another class of case being left to be determined by the ordinary tribunal. There was practical convenience in allowing the practice to continue. In the present case, the ordinary procedure should be adopted. The motion should stand over generally and if an action were started by the trustee within three months, it should not be restored till the action was disposed of. If no action were then started, the respondents were to have liberty to apply with regard to costs. If the action were tried, the costs of the parties to it should be dealt with by the judge.

COUNSEL: *C. Gallop*; *C. N. Davis* and *G. O. Slade*.

SOLICITORS: *Laytons*; *Ford, Michelmore, Rose & Wilkins*.

Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Hepworth: Rastall *v.* Hepworth.

Farwell, J. 9th July, 1936.

WILL—CONSTRUCTION—GIFT OF RESIDUE—LIFE INTEREST TO SON—SON'S POWER OF APPOINTMENT—NOT EXERCISED BEFORE DEATH—GIFT IN DEFAULT OF EXERCISE TO HIS CHILDREN—LEGITIMATED CHILD—WHETHER ENTITLED—"DISPOSITION"—LEGITIMACY ACT, 1926 (16 & 17 Geo. 5, c. 60), ss. 2, 10, 11.

The testator, who died in 1922, by his will bequeathed the residue of his estate to trustees in trust for his children in equal shares, directing that the shares should be settled and that his children should have the income for life on protective trusts. It was further directed that after the death of these children the trustees should stand possessed of the share of each child upon trust for the children or remoter issue of each child as such child should by deed or will appoint, and, in default of such appointment, for the children of such child. In January, 1915, one of his sons had become the father of an illegitimate daughter, and in August, 1915, had married the mother, children being subsequently born of the marriage. In 1928 he died without having exercised the power of appointment given him by the will. His share of the testator's residuary estate having become distributable among his children, the question arose whether the daughter born in 1915 was entitled to participate.

FARWELL, J., in giving judgment, said that apart from the Legitimacy Act, 1926, she could have no claim to participate. She became the legitimated child of her father and mother

when the Act came into operation on the 1st January, 1927. It was provided by s. 2 (1) that a legitimated person should be entitled to take any interest "under any disposition coming into operation after the date of legitimation . . . in like manner as if the legitimated person had been born legitimate." By s. 10 (2) it was provided that nothing in the Act should "affect the operation or construction of any disposition coming into operation before the commencement of this Act." By s. 11 "disposition" was defined as "an assurance of any interest in property by any instrument whether *inter vivos* or by will." It had been argued that "disposition" meant the moment at which under a will, whenever made, the particular benefit to the legitimated person became a vested interest, and that, in this case, until her father's death the whole gift was contingent. Till her father's death, it was said, there was no "disposition," and the "disposition" for the purposes of the Act meant, therefore, his death. His lordship could not accept this argument. The disposition was the will. The lady could not claim any portion of the property.

COUNSEL: *J. M. Paterson; R. W. Turnbull; C. Myles; J. N. Gray.*

SOLICITORS: *Herbert G. Rastall & Jones; Maddison, Stirling, Humm & Willett; Vizard, Oldham, Crowder & Cash.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Patten: Official Receiver *v.* Patten.

Luxmoore, J. 6th, 13th and 14th July, 1936.

EXECUTOR AND ADMINISTRATOR—INSOLVENT ESTATE—WIFE CREDITOR—LEGAL PERSONAL REPRESENTATIVE—MONEY IN HER HANDS—PAID INTO HER PRIVATE ACCOUNT—SUBSEQUENT ORDER FOR ADMINISTRATION IN BANKRUPTCY—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 59), s. 130.

S.P., who had previously carried on a business, died intestate in October, 1934. Between January, 1933, and April, 1934, his wife had lent him divers sums of money amounting to £432 10s. for the purposes of his business. On the 19th January, 1935, she was granted letters of administration to his estate. On the 31st January she received over £300 in respect of insurance, and on the 1st February she paid into her private account this and other moneys which had come into her hands as executrix to the amount of £432 10s. Subsequently, on a petition presented by her under s. 130 (9) of the Bankruptcy Act, 1914, an order was made for the administration of the estate in bankruptcy, the sum paid into her private account being then still in her hands. The official receiver now claimed that she was not entitled to retain that sum out of the estate and that consequently he was entitled to repayment thereof.

LUXMOORE, J., in giving judgment, said that it had been argued that the official receiver had no title to the money, because it ceased to form part of the estate before the order for administration in bankruptcy was made. Reliance had been placed on s. 130 (8) of the Act which applied both when the petition for administration in bankruptcy was presented by a creditor and when it was presented by the legal personal representative. The sub-section enacted that nothing in the section should invalidate "any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration." His lordship considered that if the money had been paid in satisfaction of a debt of creditors other than herself, the section would have applied. The question was whether the transfer to her private account enabled her to say that the money no longer formed part of the estate, and that depended on whether at the time she had a right of retainer against the other creditors of the estate. If she had not, the money remained in her hands as part of the estate and the title to it was not affected by the transfer to her private account. By s. 36 (2) of the Bankruptcy Act, 1914, a wife's claim in bankruptcy had been postponed to that of the other creditors. By s. 34 and Pt. I of the 1st Sched. to the Administration of Estates Act, 1925, when the estate of a deceased person was insolvent, the same rules were to prevail as to the priorities of debts and liabilities as might be in force with respect to the assets of a person adjudged bankrupt. The decision in *In re Ambler* [1905] 1 Ch. 697, purporting to follow *In re May*, 45 Ch.D. 499, and *In re Leng* [1895] 1 Ch. 652, which had the result that, though a wife's loan to her husband for business purposes was postponed by statute to claims of other creditors where the estate was insolvent, yet, if she were his legal personal representative, she could defeat the statutory provisions, obtaining priority, was considered by the House of Lords in *Attorney-General* v. *Jackson* [1932] A.C. 365 (see pp. 374, 385). It was held that a legal personal representative's right to retain could not be exercised so as to defeat the provisions of the Bankruptcy Act. The debts in that case were due to the Crown, but his lordship considered that there was no difference in principle between the case of a debt given priority by the express terms of a statute and the case of a particular class of debts being expressly postponed to another class. The case of *Attorney-General* v. *Jackson*, *supra*, governed this case. The money here in question formed part of the husband's estate, and must be paid to the official receiver.

COUNSEL: *W. Waite; Willes.*

SOLICITORS: *Solicitor to the Board of Trade; Sharpe, Pritchard & Co.*, agents for *Underhill, Neve, Thorneycroft, Taylor & Co.*, of Wolverhampton.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Liverpool Corn Trade Association, Ltd. *v.* Hurst and Others.

MacKinnon, J. 8th and 11th May, 1936.

GUARANTEE — CO-GUARANTORS — ASSIGNMENT BY ONE GUARANTOR OF HIS PROPERTY FOR THE BENEFIT OF CREDITORS—RELEASE OF DEBTOR—RIGHT RESERVED TO CREDITORS TO SUE THOSE LIABLE FOR DEBTOR'S DEBTS—EFFECT OF ON DEBTOR'S CO-GUARANTORS.

Action to recover money alleged to be due on a guarantee.

The plaintiff association existed for the promotion of the interests of the corn trade. By the association's articles members were constituted by being allotted one share each. The shareholders, and therefore the members, could only be individuals. Public or private companies could enjoy the benefits of the association by means of nominees (in the case of a private company, one nominee) who became shareholders. A nominee of a private company might not trade except on the account of the company which he represented. In March, 1931, a private company, called Strauss & Co. Ltd., having appointed a nominee to be a member of the association, four directors of the company, namely, the defendant Hurst, one Strauss, the nominee himself, and another, signed a guarantee whereby, in consideration of the appointment of the nominee to membership of the plaintiff association, they jointly and severally undertook to be personally responsible for the discharge by the company of its liabilities to members of the association. In January, 1935, Strauss assigned the whole of his property, with certain exceptions, for the benefit of his creditors. Clause 18 of the deed of assignment contained a release of Strauss by all the creditors from all debts or demands whatsoever by any of their number. Among the creditors were all the companies, members of the association, on behalf of whom the association brought the present action. The directors of the association were themselves parties to the release. The action was brought against Hurst in respect of the debts of Strauss & Co., on the guarantee of March, 1931, the remaining signatories being third parties to the action.

MACKINNON, J., said that he was firstly of opinion that the association were entitled to sue. In so far as Hurst was

liable under the guarantee to discharge the obligations of Strauss & Co. to members of the association, the association was entitled, as trustee for the members, to call on Hurst to implement his undertaking. That arose from the principle laid down in *Lloyd's* v. *Harper* (1880), 16 Ch. D. 290. Most of the claimants for whose benefit the present action was being brought were incorporated companies, and it had been argued that, by virtue of the rules of the association, they were not members of it, since only individual shareholders could be members, and that no liability by Strauss & Co., except to members of the association, was guaranteed. If the word "members" in the guarantee had the limited meaning which had been suggested, the guarantee was of very little commercial value. The real meaning of "members" was, in his (his lordship's) opinion, "members of the association or any incorporated company whose nominee is a member." The third question was the class of liability to which the guarantee referred. In terms the guarantee contained neither limitation nor definition. Strauss & Co.'s liabilities were in fact in respect of matters other than corn. If, however, he (his lordship) was to limit the full generality of the phrase "liabilities and obligations of a company" in the guarantee, he found it impossible to specify a limitation. He did not think it possible, as a matter of construction, to give to the words any smaller effect than the meaning which they clearly bore. A fourth point, however, remained. The debts from which Strauss had been released included his debts as one of the co-signatories of the guarantee. If Strauss, as a joint debtor, were released, the other joint debtors would also be released unless there were clear words in the release to prevent it. Clause 18 of the deed of assignment contained the words "the release to the debtor . . . shall not prevent any of the creditors from suing any other persons . . . who are in any manner liable for the payment of any debts of the debtor . . ." The question was whether, notwithstanding Strauss's release, that was a sufficient reservation of Hurst's liability. He (his lordship) could not see that Hurst was in any way a person liable for the payment of Strauss's debts. The words "who are in any manner liable for the payment of any debts of the debtor" were inapplicable to cover the liability of Hurst as a joint debtor with Strauss. In his (his lordship's) opinion, the action failed by reason of the execution by the plaintiff company of that release of Strauss. It was immaterial that the release was executed also by those on whose behalf avowedly the plaintiff company now brought this action.

Counsel: *Spens*, K.C., *Willink*, K.C., and *John Whyatt*, for the plaintiffs; *Sir William Jowitt*, K.C., and *Philip Vos* for the defendant; *H. G. Robertson*, *C. T. Miller* and *Gerald Gardiner*, for the third parties respectively.

Solicitors: *Thomas Cooper & Co.*, Agents for *Laces & Co.*, Liverpool; *Judge, Hackman & Judge*, for the defendant; *Richards, Butler, Stokes & Woodham Smith*, for the third parties; *Mendl & Andrews*; *Bird & Bird*, for the third party, Strauss; *A. M. Longhurst & Butler*, for the third party, Lessing.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Newell *v.* Cross; Same *v.* Cook; Same *v.* Plume; Same *v.* Chenery.

Lord Hewart, C.J., du Parcq and Goddard, JJ.
12th May, 1936.

Road Traffic—Taxi-cab—Fare Paid to Driver by one Passenger—Contribution to Fare by other Passengers—Express Carriage—Whether Cab used as—Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), ss. 61 (1), 67, 72 (10).

Case stated by Ipswich justices.

In November, 1935, the respondent Cross engaged the respondent Cook, a taxi-cab driver, from a cab-rank, to convey her and some friends to Shotley, 10 miles from Ipswich, and back, at an agreed price of 14s. Cook duly picked up Cross and her friends at different addresses in Ipswich and conveyed them in his taxi-cab to a dance at Shotley. During the journey, the cab was stopped by a police constable and a traffic examiner. In reply to questions put to her, Cross said that she was paying Cook 14s. for the journey, and that she would collect 2s. from each of her six friends in the cab. Neither respondent held a road service licence or a public service licence. Cook was unaware that Cross intended to collect from the other passengers any part of the fare payable to him. Cross duly collected 2s. from each of her friends. Cook had never previously conveyed Cross in a taxi-cab. On the 26th of the same month, the respondent Mrs. Plume engaged the respondent Chenery to take her and her daughters to Shotley in a taxi-cab. Plume had previously been going to and fro to dances at Shotley, taking with her her three daughters and their friends. Chenery had frequently driven Plume to Shotley, the agreed charge invariably being 14s., irrespective of the number of passengers. The daughters' friends contributed to the fare on some occasions. On this occasion, Plume paid Chenery 14s. before starting, without then having collected anything from the other passengers. She subsequently received 2s. each from two of her passengers, and admitted that the others still owed her money. The cab having been stopped like that of Cross, one of the passengers said, in reply to a question, that 2s. either had been or would be paid to Plume by each of the passengers. The figure of 2s. was suggested by the traffic-examiner. Informations were preferred by the appellant against Cross and Plume charging them with having unlawfully caused a motor vehicle to be used as an express carriage on a public road, without there being in force a road service licence in respect of that vehicle, contrary to s. 72 (10) Road Traffic Act, 1930. Cook and Chenery were each charged (*a*) with unlawfully permitting a motor vehicle to be used as an express carriage without a road service licence contrary to s. 72 (10) and (*b*) with unlawfully permitting it to be so used when they were not the holders of a public service licence authorising them to use it as a vehicle of that class, contrary to s. 67 of the Act of 1930. The justices dismissed all the informations, holding that the cabs were not being used as express carriages. They found that Cook and Chenery did not, and had no reason to know of any arrangement with regard to contributions to the fares. They also found that Cross, having paid Cook 14s. at Shotley, subsequently collected 2s. from each fellow-passenger, and that Plume had paid Chenery 14s. before starting and had not then received any contributions towards the fare.

Lord Hewart, C.J., said that the law on this matter was tolerably plain. In s. 61 (1) of the Act of 1930 an express carriage was defined as a motor vehicle carrying passengers for reward at separate fares for a journey from one or more points specified in advance to one or more common destinations so specified. By s. 61 (2), where persons were carried in a motor vehicle for any journey in consideration of separate payments made by them, whether to the owner of the vehicle or to any other person, the vehicle in which they were carried should be deemed to be a vehicle carrying passengers for hire or reward at separate fares, whether the payments were solely in respect of the journey or not. The position of the passenger and of the owner of a cab in respect of which no road service licence was in existence when one passenger paid for the cab and collected contributions from the others depended on the particular facts of the individual case. There might be hard cases and ones which at first sight appeared ridiculous. That, however, was no reason why the law should not be enforced. The case of Miss Cross, who clearly intended to collect a rateable contribution from each of her fellow-passengers, was clear. Unwittingly no doubt, she had offended against the law. Her case must be remitted to the justices with a direction to find the charge proved. There was, happily, an Act which,

in a proper case, allowed justices even to refrain from proceeding to conviction. With regard to Cook, it was material to recall words used by Avory, J., in *Goldsmith* v. *Deakin* (1933), 50 T.L.R. 73, when he referred to "circumstances in which he (i.e., a person hiring out a vehicle) ought to know that it probably will be or may be used as a stage carriage." He (his lordship) was, however, not prepared to say that the justices came to a wrong conclusion in point of law in their finding that there was no knowledge in Cook, and the appeal in that case must be dismissed. In the case of Mrs. Plume there was nothing satisfactory to indicate that contributory payments were contemplated at the outset or formed any part of a bargain. The appeals in her case and that of Chenery must also be dismissed. With regard to the methods adopted in these cases, it was apparent that but for admissions extracted by the questioning by some official of persons in the taxi-cabs, the prosecution would have had no materials on which to proceed. No warning appeared to be administered to people who were questioned in that manner. He (his lordship) thought that the fair thing was to give a warning.

DU PARCQ, J., agreed, and, in the course of his judgment, said that if ever it happened (he was not saying it had happened here) that Parliament, in drafting a law of general application, had spread the net too wide, the best way of pointing out the defect was that it should be rigidly enforced by the courts.

GODDARD, J., agreed, and, in the course of his judgment, observed that, whereas the Road Traffic Act, 1930, had laid down certain matters on which police constables or other officials might require information, and imposed obligations on persons to give information on certain occasions, he could find no provision entitling a police constable or a traffic examiner to cross-examine passengers in a taxi-cab. It seemed to him most desirable that, if persons were to be questioned in such a way, a caution should in all common fairness be given, as now had to be done by a constable in the case of any other criminal offence. He hoped that justices would in future refuse to admit evidence obtained in this manner, when no proper caution had been given.

COUNSEL: *Valentine Holmes*, for the appellant; there was no appearance by or on behalf of the respondents.

SOLICITOR: *The Treasury Solicitor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Commissioners of Inland Revenue *v.* Bilsland.

Lawrence, J. 22nd and 28th May, 1936.

REVENUE — SUR-TAX — AVOIDANCE — SALE OF ASSETS — "INCOME . . . DEEMED TO ACCRUE FROM DAY TO DAY"— "EXCEPTIONAL AND SYSTEMATIC"—ONE AVOIDANCE BY A NUMBER OF SALES—FINANCE ACT, 1927 (17 & 18 Geo. 5, c. 10), s. 33 (3) and (4).

Case stated by the Commissioners for the Special Purposes of Income Tax.

A certain company was in a position to declare a dividend of £100,000 out of accumulated profits. The appellant, the holder of 960 out of the 1,000 ordinary shares in the company, wishing to avoid payment of sur-tax on the dividend when it should be declared, sold 955 of the shares to various persons at £75 a share, at the same time promising them that a dividend would be declared, by which they would be enabled to pay the price. He was in a position to give that promise by reason of the voting power which possession of preference shares in the company gave him. The sales of the shares having been completed, a dividend of £50 per share was, in March, 1933, declared in respect of the company's year ended the 30th April, 1932. In April, 1933, a similar dividend was declared for the year ended the 30th April, 1934. The two dividends made a net dividend of £75 per share (£100 less £25 income tax). The arrangements for the transfers of the shares to the various persons were verbal, and there were no subsequent written agreements. The majority of the purchasers could not have found the money for the purchase apart from the dividend. An additional assessment in the sum of £49,750 having been made on the appellant for the year 1932–1933 on the basis that he was the holder of the 955 ordinary shares which had yielded a dividend of £50 a share, he appealed to the Special Commissioners. At the hearing of that appeal, it was contended for the appellant, *inter alia*, (1) that the sales of shares were real transactions with no arrangement by which the appellant retained any interest in the shares or the dividends; and (2) with regard to s. 33 of the Finance Act, 1927, that there was merely one act of avoidance, namely the disposing of the shares, and that such a single transaction entered into for the first and only time in 1933 could only be designated as exceptional, and was, therefore, not part of a system, and that there had been no similar avoidance during the three preceding years. It was contended for the Crown, *inter alia*, (1) that the appellant was beneficially entitled to the dividends on the shares; (2) that he had not proved that the avoidance of sur-tax was exceptional and not systematic; and (3) that the shares were assets to which s. 33 of the Act of 1927 applied, and that the income from the shares must be deemed to have accrued from day to day and to have been apportioned to the appellant accordingly, and that, as so apportioned, that income formed part of his total income for the purposes of assessment to sur-tax. The Special Commissioners held that the sales of the shares deprived the appellant of any beneficial interest in them, but that the case fell within s. 33 of the Finance Act, 1927, and that the appellant had not proved that the avoidance was exceptional, and not systematic within the meaning of the proviso to s. 33 (4). *Cur adv. vult.*

LAWRENCE, J., said that the two points to be decided were (1) whether the shares sold by the appellant in the circumstances established were assets to which s. 33 (3) and (4) of the Act of 1927 applied, and (2) whether the proviso to s. 33 (4) protected the appellant from liability to sur-tax on the income which he was deemed to have received from those assets. The appellant had argued that the words of the sub-sections were inapt to cover this case, because, if the income from the assets had accrued due from day to day, the appellant could not, by selling the assets, have avoided the tax. In his (his lordship's) opinion, that argument was unsound, because it failed to take into account the words "deemed to" in sub-s. (3). The words "if the income had been deemed to accrue" were, he thought, introduced in order to define the amount of sur-tax which the taxpayer must have avoided in order to bring the assets in question into charge. The appellant was, however, entitled to succeed on the second point. In his (his lordship's) opinion, the words "exceptional and not systematic" in the proviso had relation primarily to number. It was impossible in its context to read the word "systematic" as meaning "planned" or "devised." The more planned or devised an avoidance, the more exceptional it was. It was impossible to say fairly that a single avoidance was systematic and not exceptional. Further, it was immaterial that the exceptional avoidance had been carried out by means of a number of sales. The appeal must accordingly be allowed.

COUNSEL: *Latter*, K.C., *Glover*, K.C., and *Heyworth Talbot*, for the appellant; *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the respondents.

SOLICITORS: *Blundell, Baker & Co.*, agents for *Snowball, Kyffin-Taylor & Pruddah*, Liverpool; *Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume see page iii of Advertisements.]

Mr. Alfred Martin George Daniel, solicitor, of Frome, partner in the firm of Daniel and Cruttwell, left £19,317, with net personalty £13,297.

Legal Notes and News.

Honours and Appointments.

With the approval of the Minister of Health, the Board of Control have appointed Mr. J. C. RAWLINSON and Mr. H. R. GREEN to be Commissioners. Mr. Rawlinson was called to the Bar by Gray's Inn in 1924, and Mr. Green was called to the Bar by Lincoln's Inn in 1926.

The Board of Trade have appointed Mr. HUGH SUDELL BLOOMER to be Official Receiver for the Bankruptcy District of the County Court holden at Great Grimsby with effect from the 1st October, 1936, in the place of Mr. John Fildes Wintringham. Mr. Bloomer was admitted a solicitor in 1920.

Mr. DAVID LATTO, J.P., has been appointed Town Clerk of Dundee in succession to Mr. W. H. Blyth Martin, C.B.E., D.L., J.P., who has retired owing to ill-health. Mr. Latto, who has been Town Clerk Depute for the past twenty-five years, qualified as a solicitor in 1907.

Notes.

The report of the Circuit Towns Committee has been published (Cmd. 5262, Stationery Office, price 2d. net).

Mr. Robert Ernest Ross, Chief Clerk to the Court of Criminal Appeal, took his seat before the Judges' Bench for the last time, when there was a vacation sitting in the Lord Chief Justice's Court on the 13th August. Mr. Ross, who was called to the Bar by the Middle Temple in 1908, has held the position of Chief Clerk since the Court of Criminal Appeal was established in 1907, and has been on duty at every murder appeal which has been heard in this country. He is sixty-five, and his retirement is due to take place on 30th September.

The Minister of Health, Sir Kingsley Wood, and the President of the Board of Education, Mr. Oliver Stanley, have jointly appointed Mr. E. R. Thompson to be Press Officer in the Public Relations Departments of the Ministry and the Board. Mr. Thompson has now entered on his duties, and he will be ready to deal with all press enquiries relating to the work of the Ministry and the Board, including those arising out of material circulated to the press by the Departments. The Press Office is just inside the main Whitehall entrance to the Ministry, and the telephone number is Whitehall 4300, extension 513.

Wills and Bequests.

Mr. John Fish Symons, solicitor, of Cambridge, left £30,314, with net personalty £30,198.

Mr. Harry Emery, solicitor's clerk, of Tamworth, Staffs, left £43,541, with net personalty £38,591.

Mr. Percy Henry Newill, retired solicitor, of Bishops Castle, left £22,757, with net personalty £15,755.

Mr. John Herbert Turner, solicitor, of Holmfirth, near Huddersfield, left £16,799, with net personalty £14,077.

Mr. Herbert March, solicitor, of Worcester, left £7,620 with net personalty £3,887.

Mr. Bernard Wiltshire Tolhurst, solicitor, of Tunbridge Wells, left estate of the gross value of £162,489, with net personalty £34,475. He left £500 to the Convent of the Sisters of Charity of St. Vincent de Paul for the Hostel and Home for Girls, Liverpool; £500 to the Benevolent Society for the Relief of Aged and Infirm Poor; £500 to Providence Row Night Refuge and Home, Crispin-street; £1,500 to the Incorporated Society of the Crusade of Rescue and Home for Destitute Catholic Children; £1,000 to the Sisters of Hope, Eastbourne; £500 to Westminster Diocesan Education Fund for Poor Children, for repairing schools; £1,500 to the Treasurer of Our Lady's Young Priests Fund; £500 to St. David's House for Totally Disabled Sailors and Soldiers, Ealing; £500 to St. Dunstan's Hostel; £500 to St. Joseph's Convent, Mare-street, Hackney, for St. Joseph's Hospice for the Dying; £500 to the Convent Marie Auxiliatrice, Bow-road, E.; £500 to the Catholic Truth Society; £1,000 to Westminster Cathedral Building Fund; £1,000 to the Convent of Poor Clares, Notting Hill; £1,000 to the Community of the White Fathers, Heston, for Foreign Missions; £1,000 to the Congregation of the Salesian Fathers, Battersea; and £500 to the Society of the Holy Child Jesus, for the African Mission of the Society; and, should residuary trusts fail, the residue of the property to the Roman Catholic Bishops of the Roman Catholic dioceses of Brentwood, Southwark, and Northampton.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 27th August, 1936.

	Div. Months.	Middle Price 19 Aug. 1936.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	114¾	3 9 8	3 0 2
Consols 2½%	JAJO	85	2 18 10	—
War Loan 3½% 1952 or after	JD	106⅞	3 5 6	2 19 0
Funding 4% Loan 1960-90	MN	118¼	3 7 8	2 18 7
Funding 3% Loan 1959-69	AO	103⅜	2 18 0	2 16 0
Funding 2½% Loan 1956-61	AO	93½	2 13 6	2 17 5
Victory 4% Loan Av. life 23 years	MS	116⅛	3 8 8	2 19 11
Conversion 5% Loan 1944-64	MN	119½	4 3 11	2 0 9
Conversion 4½% Loan 1940-44	JJ	109⅝	4 2 1	2 8 8
Conversion 3½% Loan 1961 or after	AO	108¼	3 4 8	3 0 6
Conversion 3% Loan 1948-53	MS	103⅞	2 17 10	2 12 7
Conversion 2½% Loan 1944-49	AO	101⅜	2 9 1	2 4 9
Local Loans 3% Stock 1912 or after	JAJO	96¾	3 2 0	—
Bank Stock	AO	379	3 3 4	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	88	3 2 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96½	3 2 2	—
India 4½% 1950-55	MN	116⅛	3 17 3	3 0 9
India 3½% 1931 or after	JAJO	99½	3 10 4	—
India 3% 1948 or after	JAJO	87¼	3 8 9	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 3
Sudan 4% 1974 Red. in part after 1950	MN	116	3 9 0	2 12 4
Tanganyika 4% Guaranteed 1951-71	FA	114	3 10 2	2 15 7
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4 2 7	2 14 0
Lon. Elec. T. F. Corpn. 2¼% 1950-55	FA	96	2 12 1	2 15 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109	3 13 5	3 7 0
*Australia (C'mm'nw'th) 3½% 1948-53	JD	104	3 12 2	3 6 9
Canada 4% 1953-58	MS	110½	3 12 5	3 3 9
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	101	2 19 5	2 17 4
Nigeria 4% 1963	AO	114	3 10 2	3 4 4
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 0
South Africa 3½% 1953-73	JD	108	3 4 10	2 18 0
*Victoria 3½% 1929-49	AO	102	3 8 8	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	98	3 1 3	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	106½	3 5 9	2 19 8
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	80	3 2 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95½	3 2 10	—
Manchester 3% 1941 or after	FA	96	3 2 6	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100½	2 9 9	—
Metropolitan Water Board 3% "A" 1963-2003	AO	97	3 1 10	3 2 1
Do. do. 3% "B" 1934-2003	MS	97½	3 1 6	3 1 9
Do. do. 3% "E" 1953-73	JJ	100	3 0 0	3 0 0
Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 17 10
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 1 6
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	107	3 5 5	3 3 0
ENGLISH RAILWAY DEBENTURE AND †REFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	115	3 9 7	—
Gt. Western Rly. 4½% Debenture	JJ	125	3 12 0	—
Gt. Western Rly. 5% Debenture	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	131xd	3 16 4	—
Gt. Western Rly. 5% Preference	MA	120½xd	4 3 0	—
Southern Rly. 4% Debenture	JJ	113½	3 10 6	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	111½	3 11 9	3 6 8
Southern Rly. 5% Guaranteed	MA	131¼xd	3 16 1	—
Southern Rly. 5% Preference	MA	120½xd	4 3 0	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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‡Approximate Yield with redemption	
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